

REMARKS

At the outset, the Applicants note that claims 1-4 and 12-18 have been canceled, and new claims 19-26 have been added. Independent claim 7 has been amended to restore its original reading and to add the further limitation that the pliable membrane does not form a tamper-evident seal across the mouth of the receptacle. This is true at some point in time for all disclosed embodiments. For example, in the embodiments depicted in Figures 5 and 7, once the membrane is broken, it does not perform the function of a tamper-evident seal and its only remaining function is to provide a leak-proof interstice between the zipper profiles. For the embodiment depicted in Figure 8, the membrane 96 never acted as a tamper-evident seal.

In the Final Rejection, claims 1-4, 7, 9, 10 and 12-18 were again rejected under 35 U.S.C. 103(a) as being unpatentable over Machacek in view of Ausnit '414. In the rebuttal to Applicants' arguments submitted in the previous Amendment filed on September 29, 2003, the Examiner asserts that it would have been obvious to employ the membrane of Ausnit in the bag of Machacek to provide a tamper-evident feature. The Applicants traverse this ground of rejection for the following reasons.

The claims are now directed to the aspect of the invention wherein the recited pliable membrane does not act as a tamper-evident seal. In that case, the sole purpose of the pliant membrane is to act as a leak-proof gasket disposed between the interlocked zipper profiles.

In the absence of any tamper-evident function, the Applicants submit that the Examiner cannot find any motivation in either the Machacek or Ausnit reference for combining their respective teachings. The Ausnit patent discloses zippers that are unsuitable for use with a slider. In fact, the Ausnit patent nowhere mentions sliders. The Ausnit patent discloses sealing gasket means in the form of a thin tongue flange (e.g., item 33 in FIGS. 2 and 3. "The principal aim is to assure that when the zipper 27 is closed, a thoroughly fluid tight relationship is attained throughout the length of the zipper with which the gasket flange 33 should be coextensive." [Col. 3, lines 19-23; emphasis added.]

The Machacek patent discloses a zipper wherein the interlocked profiles form a leak-proof seal. For example, the Machacek patent states: "The surfaces of the fulcrum members 32, 34 are contoured to create a leak proof seal between the interlocked profiles 12, 14 at the fulcrum 36." [Col. 3, lines 44-47; emphasis added.] Machacek further states: "The close tolerances and dimensions of the male interlocking member 16 and the female interlocking member 20 ensure a tight interlock between the profiles that provides leak proof properties." [Col. 3, lines 27-30; emphasis added.]

Thus, both Machacek and Ausnit disclose a zipper that is leak-proof. There is no obvious reason why the leak-proof feature of Ausnit, namely, the sealing gasket, should be imported into the Machacek zipper when the latter is already


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leak-proof. Accordingly, one can find no motivation for importing the gasket of Ausnit into the slider-zipper assembly of Machacek. Without such motivation, the Examiner has failed to make a *prima facie* case for obviousness of Applicant's claimed invention.

In view of the foregoing, the Applicants submit that this application is now in condition for allowance. Reconsideration of the application and allowance of claims 7, 9, 10 and 19-26 are hereby requested.

Respectfully submitted,

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Date


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